SUPREME COURT OF THE UNITED STATES

OCTOBER TERM, 1943

No. 500

IN THE MATTER OF JAMES K. BOWEN, BANKRUPT.

HENRY BAKER,

Petitioner,

vs.

THE UNITED STATES OF AMERICA.

BRIEF FOR HENRY BAKER, PETITIONER.

The Facts.

The facts are stated in the petition, page 3. We emphasize that the decision of the District Court was based upon the ground that the Bankruptcy Court did not have jurisdiction to set aside the Commissioner's discharge of the tax liens and that the Referee erred in vacating or setting aside the discharges.

Argument.

I—*The Circuit Court of Appeals has decided an important question of federal law which has not been, but should be, settled by this court.*

The scope of the power and jurisdiction of a Bankruptcy Court, insofar as it applies to the single question here pre-

sented, constitutes an important question of federal law.

The Internal Revenue Code, Sec. 3670 (U. S. C. 1940 ed. Title 26) subjects all property and rights to property, whether real or personal belonging to any person who neglects or refuses to pay any tax, to a lien in favor of the United States.

The magnitude and value of property which thus becomes subject to the provisions of this Act is immediately apparent. It is of immeasurable importance therefore that the proper forum having jurisdiction of such a prolific source of vexatious disputes and litigation be properly and authoritatively defined by this court.

Sec. 3675 of this Act provides as follows:

> "A certificate of release or of partial discharge issued under this subchapter shall be held conclusive that the lien upon the property covered by the certificate is extinguished."

This section of the statute evidences a strong intention on the part of Congress that discharges of liens made under this section may not be revoked or set aside, especially in view of the fact that other Acts providing for compromise agreements between taxpayers and the Commissioner contain dissimilar provisions. Illustrative of the latter is the language of Sec. 1106 (b) of the Revenue Act of 1926, 44 Stat. 9, 113, which provides as follows:

> "* * * that such determination and assessment shall be final and conclusive (*except upon a showing of fraud or malfeasance or misrepresentation of fact materially affecting the determination or assessment thus made* * * *) and (2) no suit, action, or proceeding to annul, modify, or set aside such determination or assessment shall be entertained by any court of the United States." (Emphasis supplied.)

The fact that there was no such exception or reservation in Sec. 3675 is indicative of the intention of Congress.

It is submitted that the clarity and concise language of the Act may have precluded the possibility of a prior judicial determination of the jurisdiction of the Bankruptcy Court or of any other court upon this question. Whatever reason may be ascribed to the absence of such judicial expression, the District Court has said, and the Circuit Court of Appeals has not negatived the statement that despite an exhaustive search it has failed to find a single case where there was a vacation of a discharge of a lien, whether in bankruptcy or otherwise. Furthermore, in the instant case, the government frankly concedes that the action of the referee in vacating the discharge of the tax liens is without precedent (R. 126a).

The Circuit Court of Appeals cited no cases which support its reversal of the lower court, and, disregarding the plain language of Sec. 3675, found jurisdiction in the Bankruptcy Court under the general provisions of the Bankruptcy Act (52 Stat. 843, 11 U. S. C. Sec. 11 (a) (7)) which confers jurisdiction upon Courts of Bankruptcy to "Cause the estates of bankrupts to be collected, reduced to money, and distributed, and determine controversies in relation thereto."

II—*The Circuit Court of Appeals has decided a federal question in a way probably in conflict with applicable decisions of this court.*

The question as to whether a federal Bankruptcy Court has the power to revise or redetermine property valuations, for tax purposes, made by duly constituted taxing officials has been set at rest by the Supreme Court in the case of *Arkansas Corporation Commission* v. *Thompson,* 313 U. S. 132. In that case it was held that the valuation of property made by state taxing officials for taxation purposes could not be revised by a bankruptcy court; that there is nothing

in the history of bankruptcy legislation to support the theory that Congress intended to set the federal courts up as super-assessment tribunals over state taxing agencies.

In the case at bar the decision of the Circuit Court of Appeals would permit a determination of the value of property, made by the Commissioner of Internal Revenue for the purpose of fixing a consideration for the discharge of a federal tax lien, to be revised by a bankruptcy court.

The Commissioner in the instant case made a formal determination of the value of the interest of the United States in the real estate sought to be discharged from the tax liens. In so doing the Commissioner determined the value of the real estate. In order to find that the discharge was obtained by the alleged constructive fraud, the bankruptcy court was obliged to re-examine the value of the real estate and of the interest of the United States therein.

If the Arkansas case decided that a bankruptcy court has no jurisdiction to revise the valuation of property made by taxing officials for tax purposes, it would seem that the Circuit Court of Appeals decided the instant case in conflict with the decision of this court.

The instant decision of the Circuit Court of Appeals is likewise in conflict with the decisions handed down in:

In re Gould Mfg. Co., 11 F. Supp. 644;

Metropolitan Life Insurance Co. v. *United States,* 107 F. (2d) 311;

Banco Mexicano etc. v. *Deutsche Bank,* 53 App. D. C. 266, 289 F. 924, affirmed in 263 U. S. 591;

Rand v. *United States,* 249 U. S. 503, 510, 39 S. Ct. 359, 63 L. Ed. 731;

United States v. *Michel,* 282 U. S. 656, 660, 51 S. Ct. 284, 75 L. Ed. 598;

Tucker v. *Alexander,* 275 U. S. 228, 232, 48 S. Ct. 45, 72 L. Ed. 253.

Conclusion.

Your petitioner respectfully submits that the final determination by this court of the question of law involved in this case is of the utmost importance to the rights of taxpayers and others acquiring interests or equities in property of taxpayers subject to the provisions of the Act.

The decision of the Circuit Court of Appeals herein is the first judicial determination of the question presented. In addition to being a case of first impression on an important question of federal law, it is a decision which is probably in conflict with applicable decisions of this court.

Respectfully submitted,

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